

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

FRANK A RAY
Claimant

APPEAL NO. 17A-UI-07140-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRADESMAN INTERNATIONAL LLC
Employer

OC: 05/28/17
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 5, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be assessed for benefits, based on the claims deputy's conclusion that the claimant was discharged on May 7, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on August 1, 2017. Claimant Frank Ray did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Austin Hermesen represented the employer. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant. Exhibits 1 and 2 and Department Exhibits D-1 through D-7 were received into evidence.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

Whether the claimant has been overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tradesmen International, L.L.C., is a temporary employment agency that provides construction trade workers to client businesses for temporary work assignments. Frank Ray established his relationship with Tradesman International in November 2016. At that time, the employer had Mr. Ray electronically sign a Field Employee Call-in Policy Acknowledgment. That document provided as follows:

NEW HIRES

Following your employment interview, you are to call the recruiter after 4:00 p.m. daily until receiving your first work assignment. When calling, provide your name, phone

number and trade. Compliance with this call-in policy is essential to maintaining your eligibility for work. Failure to call the Project Coordinator for one week could prevent you from receiving work, and will disqualify you from receiving unemployment compensation benefits.

ACTIVE EMPLOYEES

Once working, all field employees must notify their Project Coordinator promptly when released from a work assignment or are otherwise out of work. An out-of-work field employee must call the Project Coordinator after 4:00 p.m. daily to check for available work. Compliance with this call-in policy is essential to maintain your eligibility for work. Failure to call the Project Coordinator for one week could prevent you from receiving work, and will disqualify you from receiving unemployment compensation benefits.

ALL EMPLOYEES

Your "Local Job Territory" as an employee of the Cedar Rapids office is the area within a 60 mile radius, not highway miles, of your residence. If you are offered a work assignment with this Local job territory that involves either a trade in which you have previously performed work as a Tradesmen employee, or are otherwise qualified to perform, you will be expected to accept this assignment regardless of its anticipated duration, provided the rate of pay is consistent with your usual and customary wage rate as a Tradesmen employee. Your refusal of any such Local job territory assignment will disqualify you from receiving unemployment insurance benefits if this refusal results in your [sic] not working. Work assignments beyond this Local job territory may provide travel pay, per diem, or other expense compensation, and your decision to accept or decline such assignments will not affect either your unemployment compensation eligibility or your employment status.

The employer did not have Mr. Ray sign any other documents regarding his obligation to contact the employer at the end of a work assignment.

On Monday, May 1, 2017, Mr. Ray began a full-time temporary work assignment with U.S. Grain. The job site was located in Cramer, Illinois. The employer estimates the commuting time from the Tradesmen Cedar Rapids branch to Cramer, Illinois to be about two and a half hours. On May 1, a U.S. Grain representative collected Mr. Ray and other Tradesmen employees at the Tradesmen Cedar Rapids branch office and transported them to the Cramer job site for the work week. Mr. Ray continued to perform work in the U.S. Grain assignment through the end of the workday on Friday, May 5. U.S. Grain then transported Mr. Ray back to Cedar Rapids. Tradesmen and U.S. Grain expected Mr. Ray to meet at the Tradesmen Cedar Rapids branch office on the morning of Monday, May 8, 2017 to again travel with U.S. Grain to Cramer for the work week as part of the ongoing assignment. However, on the morning of Monday, May 8, 2017, Mr. Ray was absent without notice to the employer. If Mr. Ray needed to be absent, he was expected to notify Tradesmen Field Representative Isaac Lukens. Because Mr. Ray did not meet the U.S. Grain representative on Monday morning to be transported to Cramer, Illinois, that effectively made Mr. Ray unavailable for work in the assignment for the entire week. Tradesmen and/or U.S. Grain declined to have Mr. Ray return to the assignment.

Mr. Ray established a claim for unemployment insurance benefits that was effective May 28, 2017. This was the same week that Mr. Ray notified Tradesmen that he was ready to return to work. Workforce Development set Mr. Ray's weekly benefit amount at \$260.00. Mr. Ray has received benefits in connection with the claim as follows: For the weeks that ended June 3, 2017, and for the week that ended June 10, 2017, Mr. Ray reported zero wages and received \$260.00 in weekly benefits. For the week that ended June 17, 2017, Mr. Ray reported \$148.00 in wages and received \$177.00 in reduced benefits. For the week that ended June 24, 2017, Mr. Ray reported \$222.00 in wages and received \$103.00 in reduced benefits. For the weeks

that ended July 1, July 8, and July 15, Mr. Ray reported zero wages and received \$260.00 in benefits. For the week that ended July 22, 2017, Mr. Ray reported zero wages, but received no benefits, because Workforce Development concluded he was not able and available for work that week. For the week that ended July 29, 2017, Mr. Ray reported zero wages and received \$260.00 in benefits. Thus far, Mr. Ray has received \$1,840.00 in unemployment insurance benefits for the period of May 28, 2017 through July 29, 2017. Mr. Ray's base period for purposes of the claim year that began May 28, 2017 consists of the four calendar quarters of 2016. Tradesmen International, Inc. is one of Mr. Ray's base period employers and has been assessed \$162.50 for benefits paid to Mr. Ray. The employer's maximum liability in connection with the claim year that started on May 28, 2017 is \$162.50.

On June 28, 2017, a Workforce Development claims deputy held a fact-finding interview to address Mr. Ray's separation from the employer. Mr. Ray participated and provided an oral statement. Mr. Ray did not commit fraud or intentionally mislead the claims deputy in connection with the fact-finding interview. No one from Tradesmen International participated in the fact-finding interview. The employer's representative of record is Equifax. On June 27, 2017, Kathy O'Leary, Equifax Unemployment Claims Specialist, submitted a cursory letter indicating that, "[t]he claimant is considered to have abandoned his/her job after failing to return to work." In the letter, Ms. O'Leary provided 800-829-1510 as the number that should be used to contact her. Ms. O'Leary attached a copy of the Notice of Unemployment Insurance Fact-Finding Interview that had been mailed to the employer's address of record on June 15, 2017. The notice contained the date and time of the fact-finding interview. At the time of the fact-finding interview, the claims deputy attempted to reach Ms. O'Leary at the telephone number she had provided. When Ms. O'Leary did not answer, the claims deputy left a voice mail message for Ms. O'Leary. On June 15, 2017, Ms. O'Leary had filed a written protest of the claim on behalf of the employer. In the protest letter, Ms. O'Leary provided 800-829-1510 as the number that should be used to contact her regarding the protest. In the written protest, Ms. O'Leary provided dates of employment and asserted that Mr. Ray had abandoned the employment by being a no-call/no-show on May 8, 2017. Ms. O'Leary added that the employer placed Mr. Ray in a new work assignment that started May 15, 2017. As part of the June 15, 2017 protest, Ms. O'Leary included the Tradesmen International, Inc., Field Employee Call-In Policy Acknowledgment form that was electronically signed by Mr. Ray in November 2016.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

There are potentially three separate separations raised in the employer's appeal. Because the lower decision addressed only the separation on or about May 7, 2017, and because the claimant was not available to consent to adjudication of the subsequent separations, the administrative law judge deems it appropriate only to adjudicate the separation addressed in the lower decision. The separation actually occurred on May 8, 2017, when Mr. Ray was absent without notice. Mr. Ray did not complete the assignment at U.S. Grain. Mr. Ray effectively quit the assignment on May 8, 2017 by failing to appear to be transported to Cramer, Illinois for the work week.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Mr. Ray has presented no evidence to establish good cause attributable to the employer for quitting the full-time assignment. Accordingly, the separation disqualified Mr. Ray for unemployment insurance benefits until he has worked in and been paid wages equal to 10 times his weekly benefit amount. Mr. Ray must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or

incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The employer had appropriate notice of the fact-finding interview, but did not participate in the fact-finding interview within the meaning of the law. The employer did not provide any live statements for the fact-finding interview. The documentation the employer submitted at the time of protest and on June 27, 2017, did not include detailed written statements or documents that provided detailed factual information of the events leading to separation.

The claimant received benefits, but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$1,840.00 in unemployment insurance benefits for the period of May 28, 2017 through July 29, 2017. Because the claimant did not receive benefits due to fraud or willful misrepresentation, and because employer failed to participate in the finding interview, the claimant is not required to repay the overpayment. The employer's account may be charged for \$162.50 of the overpaid benefits. The employer's account is relieved of liability for benefits for the period beginning, July 30, 2017.

DECISION:

The July 5, 2017, reference 01, decision is reversed. The claimant voluntarily quit effective May 8, 2017 without good cause attributable to the employer. Effective May 8, 2017, the claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,840.00 in unemployment insurance benefits for the period of May 28, 2017 through July 29, 2017. The claimant is not required to repay the overpayment. The employer's account may be charged for \$162.50 of the overpaid benefits. The employer's account is relieved of liability for benefits for the period beginning, July 30, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs